APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,295	12/22/2000	Spencer A. Rathus	660-030	3543

7590   10/17/2003

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EXAMINER
LE, THIEN MINH

ART UNIT	PAPER NUMBER
2876	

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO 90C (Rev 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>25 June 2003</u> .

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *168-257* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *168* is/are rejected.

7) ☒ Claim(s) *169-257* is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)   4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)   5) ☐ Notice of Informal Patent Application (PTO-152)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .   6) ☐ Other: .

DETAILED ACTION

The amendment filed on 6/25/2003 has been entered.   Claims 168-227 and

newly added claims 228-257 remain for examination.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11
F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225
USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA
1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,*
418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be
used to overcome an actual or provisional rejection based on a nonstatutory double
patenting ground provided the conflicting application or patent is shown to be commonly
owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

Claim 168 is rejected under the judicially created doctrine of obviousness-type

double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,932,863

(herein referred to as the '863 patent).

Similar to claim 168 of the instant application, claim 1 of the '863 patent recites:

1. A system for displaying programming to a user, the system comprising:

a printed matter having at least one machine recognizable feature;

a feature recognition unit having associated therewith a means for recognizing
said feature and a transmitter for transmitting a coded signal in response to the
recognition of said feature;

an intelligent controller having associated therewith a receiver for receiving said coded signal and a means for accessing programming material; and

a display unit for presenting said programming material;

wherein said recognition unit, in response to the recognition of said feature, causes said intelligent controller to access said programming material and said display unit to execute or display said programming material, and

wherein said display unit comprises a personal computer.

Although the conflicting claims are not identical, they are not patentably distinct from each other because they all recited the same limitations; and thus would have been obvious in view of each. As can be seen, the patent protections have been granted in an earlier filed patent application.

Allowable Subject Matter

Claims 169-257 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose system for displaying programming material to a user comprising:

a printed matter;

a feature recognition device;

an intelligent controller;

a display unit; and having the functions and characteristics as recited in claims
169-257.

Response to Arguments

Applicant's arguments with respect to claims 169-257 have been considered but
are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Thien M. Le whose telephone number is (703) 305-
3500. The examiner can normally be reached on Monday - Friday from 7:30am -
4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Michael G. Lee can be reached on (703) 305-3503. The fax phone numbers
for the organization where this application or proceeding is assigned are (703) 308-5841
for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or
proceeding should be directed to the receptionist whose telephone number is (703) 308-
0956.

Le, Thien Minh
**Primary Examiner
Art Unit 2876
October 6, 2003**